

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, January 2, 2008

Division One

A118682 – Gary L. v. Solano County Health and Social Services Department.

The orders dated June 14, 2007, are affirmed. Marchiano, P.J. We Concur: Swager, J.,
Margulies, J. (Not for Publication.)

Thursday, January 3, 2008

Division One

A117565 – The People v. James Kenneth Stallings.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, January 3, 2008

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Swager, Justice, Margulies, Justice, and Mary Quilez, Deputy Clerk.

A115423 Miguel Jara, Sr.
 v.
 Suprema Meats Inc., et al.,
 Cause called and argued by Curtis A. Cole, counsel for appellant and Steven
 Hassing, counsel for respondent. Cause ordered submitted.

Court adjourned.

Thursday, January 3, 2008 (continued)

Division Four

A117945 – In re Daymonee J. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Evonna J.

By the Court: It is ordered that the opinion filed herein on December 12, 2007, be modified as follows: (See order.). There is no change in the judgment. Ruvolo, P.J. (Not for Publication.)

A117056 – In re J. A., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau v. Alicia A.

The jurisdictional and dispositional order is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

A116617 – Samuel C. Slack v Paul Maguire.

The order denying attorney fees is affirmed. Jones, P.J. We Concur: Gemello, J., Needham, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Friday, January 4, 2008

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Stein, Justice, Swager, Justice, and Mary Quilez, Deputy Clerk.

A114899 The People,
 v.
 Richard Leslie Davis.
Cause called and argued by Barry M. Karl, counsel for appellant and Violet Lee, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A114430 IMX, Inc.,
 v.
 Boris Auerbuch, et al.
Cause called and argued by Frederick Northrup, counsel for appellant and Jeremiah Leahy, counsel for respondent. Cause ordered submitted.

A116155 Justin Sallinen, et al.,
 v.
 Upper Lake Union High School District.
Cause called and argued by Terry Ewing, counsel for appellant and Tibor Major, counsel for respondent. Cause ordered submitted.

Court adjourned.

Monday, January 7, 2008

Division One

A117415 – The People v. Sean M. Wurzburg.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A113999 – Estate of Gertrude C. Daley, Deceased. Gregory P. O’Keeffe, as Administrator, etc. v. Ronald Daley.

A116232 – Gregory P. O’Keeffe, as Administrator, etc. v. Carolyn Daley et al.

The orders are affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A117753 – In re Bryan C., Brandon C., G.C., and R.C., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Mateo V.

The order is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Tuesday, January 8, 2008

Division One

A117103 – Lanny Jay v. Sue Kubly et. al.

The judgment of dismissal is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A119612 – Mary J. v. The Superior Court of Alameda County; Alameda County Social Services Agency et al., R.P.I.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Rule 8.264(b)(3).) Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Four

A1155145 – Nicole R. Lee v. Jerlyn L. Smith.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A114398 – Cleghorn Bar Enterprises et al. v. William F. Garlock et al.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A114308 – Denise Boucher v. Stephen Wisniewski et al.

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A115048 – Lakhpal Bharji v. New United Motor Manufacturing, Inc., etc., et al.

The judgment is affirmed. Jones, P.J. We Concur: Gemello, J., Needham, J. (Not for Publication.)

Wednesday, January 9, 2008

Division One

A118533 – The People v. Christopher Canfield.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A115971 – The People v. Patrick Shannon Ritchie.

The judgment is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Four

A117075 – The People v. Ramon Roberto Klein.

Judgment affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., River, J. (Not for Publication.)

A115018 – Paula Fiscal et al. v. City and County of San Francisco et al.

The judgment is affirmed. Petitioners are entitled to their costs on appeal. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Certified for Publication.)

Thursday, January 10, 2008

Division One

A115198 – Brian Carter et al. v. Richard Phelps et al.

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

Division Two

A116504 – In re Kenneth J., a Person Coming Under the Juvenile Court Law. The People v. Kenneth J.

The dispositional order is affirmed. Richman, J. We Concur: Kline, P.J., Lambden, J. (Certified for Publication.)

A117326 – Larry L. Castelanelli et al. v. Thomas Becker.

The judgment is reversed and the case remanded to the trial court for action not inconsistent with the foregoing opinion. Costs on appeal are awarded to appellants. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

A112028 – The People ex rel. Paul V. Gallegos, as District Attorney, etc., et al. v. The Pacific Lumber Company et al.

The judgment is affirmed. Horner, J.* We Concur: Pollak, Acting P.J., Siggins, J. (Certified for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, January 11, 2008

Division One

A116710 – Crowley Maritime Corporation v. Boston Old Colony Insurance Company et al., Boston Old Colony Insurance Company et al. v. West of England ship Owners Mut. Ins. Assoc. et al.

The order denying the petition to compel arbitration is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Certified for Publication.)

A116787 – The People v. Paul Steven Mansfield.

The court's order is modified to deny the People's petition to revoke defendant's probation, to deny defendant's request for a modification of probation and to modify the condition of probation to prohibit defendant from using, transporting or possessing any nonprescribed or illegal drugs, or any marijuana, or associated paraphernalia, and to require that he enroll in a treatment program as directed by his probation officer. As so modified the order is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A116556 – Linda Hogue v. Jim Hogue.

Insofar as the trial court's written order denies Father's request that Justin attend St. Bernard's, the order is affirmed. Insofar as the court's written order awards sole legal custody to Mother, the order is reversed and the matter is remanded for the court to grant or deny Father's request for a mutual consent joint legal custody order. On remand, the trial court is directed to rule on Father's request regarding transportation. Each party to bear its own costs. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Four

A115261, A115675 – In re R.W. and R. P., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Elissa R.

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

A113388 – Winston Lambert et al. v. Chris Carneghi et al.

The judgment is reversed to the extent the trial court sustained respondent Dailey's demurrer. In all other respects the judgment is affirmed. The cause is remanded to the trial court for further proceedings consistent with this opinion. Each party shall bear its own costs on appeal. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Certified for Publication.)

Friday, January 11, 2008 (continued)

Division Five

A116089 – Robert Kinann v. California Insurance Guarantee Association.

The judgment is affirmed. Simons, Acting P.J. We Concur: Gemello, J., Needham, J. (Not for Publication.)

A116149, A116417 – A & B Painting, Inc. v. Turner Construction et al., Custom Spray Systems, Inc. v. Turner Construction Company.

By the Court: It is ordered that the opinion filed herein on December 14, 2007, be modified as follows: (See Order.) There is no change in the judgment. Respondent's petition for rehearing is denied. Jones, P.J. (Not for Publication.)

A119688 – In re Tyrone T., a Person Coming Under the Juvenile Court Law. Victoria B. v. The Superior Court of Alameda County; Alameda County Social Services Agency.

The petition is denied. Stevens, J.* We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A116578 – The People v. John Hua.

The judgment is reversed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Certified for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, January 14, 2008

Division One

A119302 – The People v. Abdul Hadi Awad.

The order revoking defendant's outpatient status is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

A117099 – In re Angelina B. et al., Persons Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. Jose B.

The orders reducing visitation and summarily denying the father's section 388 petition are affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A116026 – Coastside Fishing Club et al. v. California Resources Agency et al.

The judgment of the trial court dismissing the complaint for declaratory and injunctive relief and petition for writ of mandate with prejudice is affirmed. Kline, P.J. We Concur: Haerle, J., Richman, J. (Certified for Publication.)

Division Three

A117047 – In re Austin S. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Stephen S.

The jurisdictional order is affirmed. The dispositional order is reversed and the case is remanded for further proceedings consistent with the views expressed in this opinion and with consideration of the children's current circumstances. Siggins, J. We Concur: Pollak, Acting P.J., Horner, J.* (Not for Publication.)

Division Four

A115654 – The People v. Luis Rene DeLeon.

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Monday, January 14, 2008

The Court reconvened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Stacy Wheeler, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

A116344 Living Rivers Council
 v.
 City of St. Helena et al.
Cause called. Thomas Lippe argued for appellant Council. James Moose argued for respondents. Cause submitted.

A117531 Prana Growth Fund I
 v.
 David Pakinson
Cause called. Curtis Dowling argued for appellant Prana. Dave Crow argued for respondent. Cause submitted.

A114857 Dan Earls
 v.
 Hagemann Meat Company, Inc.
Cause called. Guy Wilson argued for appellant Earls. Patrick Jordan and Nanette Joslyn argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P.J., Sepulveda, J., and Rivera, J.

A118657 Dell, Inc. et al.
 v.
 Superior Court, San Francisco County
 Diane Mohan et al.
Cause called. John Phillips argued for appellant Dell et al. John Phillips argued for respondent. Edwards Rapacki argued for real parties in interest. Cause submitted.

At this point, the court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A119487

Lisa F.

v.

Superior Court, Marin County

Marin County Health & Human Services et al.

Cause called. Mariko Nakanishi argued for petitioner Lisa F. Edward J. Kiernan argued for real parties in interest. Janet Sherwood argued for the minors. Cause submitted.

Court adjourned until 12:00 noon.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Monday, January 14, 2008

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Ruvolo, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

A116636 Michael Dougherty as Administrator, etc.
v.
Donald A. White as County Treasurer/Tax Collector et al.
Cause called. David Roth argued for appellant Michael Dougherty as Administrator.
Claude Kolm argued for respondent. Cause submitted.

Court adjourned at 1:54 p.m.

Tuesday, January 15, 2008

Division One

A117400 – Justin Oliver v. The CIT Group/Consumer Finance, Inc.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A118175 – The People v. Randy Lee Sherwood.

The trial court is directed to amend the abstract of judgment, striking the \$200 fine imposed pursuant to Penal Code section 1202.44, and to forward a copy of the amended abstract to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Two

A115524 – Sharon L. Less et al. v. San Francisco Fairmont Hotel Company, et al.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A114199 – The People v. Sean Edward White.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Richman, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, January 15, 2008

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Officer Oliver and S. Wheeler, Deputy Clerk.

- A116147 Estate of Klara Szanto, Deceased.
Peter Szanto,
v.
Paul Szanto et al.
Cause called and argued by appellant Peter Szanto, in propria persona, and Dennis Peter Maio, counsel for respondent. Cause ordered submitted.
- A117534 Gilbane Building,
v.
Air Systems Acquisition.
Cause called and argued by Richard Mooney, counsel for appellant, and William Siamas, counsel for respondent. Cause ordered submitted.
- A115855 Triple-T Trust et al.,
v.
Terry Lee.
Cause called and argued by Andrew Kenneth Alger, counsel for appellant, and Marlon V. Young, counsel for respondent. Cause ordered submitted.
- A115924 Lee Edmundson,
v.
Board of Supervisors Mendocino;
Monte Reed, RPI.
Cause called and argued by Rodney Richard Jones, counsel for appellant, via teleconference, Frank Edward Zotter Jr., counsel for respondent, and Steven Kaufmann, counsel for real party in interest. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Tuesday, January 15, 2008

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Richman, J., Officer Bartlett and S. Wheeler, Deputy Clerk.

A116188 Barbara E. Lane,
 v.
 Richard T. Thomas et al.
Cause called and argued by John T. Putnam, counsel for appellant, and Mark John Rice, counsel for respondent. Cause ordered submitted.

A113325 Terry Dickinson,
 v.
 California Department of Corrections et al.
Cause called and argued by Raymond Wesley Hamilton, counsel for appellants, and Jose Luis Fuentes, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Lambden left the bench and Justice Haerle joined the bench for the remainder of the calendar.

A113524 Elsie Burke,
 v.
 JP Morgan Chase & Co., et al.
Cause called and argued by Michael J. Reed, counsel for appellant, and Robert Edwin Belshaw, counsel for respondent. Cause ordered submitted.

A115782 Ronald Sandy, as successor-in-interest to
A114570 Merle Sandy, deceased
A114238 v.
 Exxon Mobil Corporation.
Cause called and argued by Stephen Earl Norris, counsel for appellant, and Gary Brayton, counsel for respondent. Cause ordered submitted.

A115471 Harold Lightfoot,
 v.
 Peninsula Equine Medicine and Surgery Group et al.
Cause called and argued by George Mills Wallace, counsel for appellant, and via teleconference, Steven M. McCarthy, counsel for respondent. Cause ordered

submitted.

Court recessed until Wednesday, January 16, 2008 @ 9:30 a.m..

Tuesday, January 15, 2008 (continued)

Division Three

A117734 – The People v. Eric Brandon Esco.

The judgment is affirmed. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J.* (Not for Publication.)

Division Four

**A116083 – In re the Marriage of Aubin Barthold and Catherine Corbin Barthold.
Aubin Barthold v. Catherine Corbin Barthold.**

The trial court's order is affirmed. Kay is awarded her costs on appeal. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Certified for Publication.)

Division Five

A117828 – The People v. David Dickens.

The case is remanded with direction to modify the abstract of judgment to reflect a restitution fine and suspended parole revocation fine of \$1,000 each and to forward a copy of the corrected abstract to the Department of Corrections. As so modified the judgment is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, January 16, 2008

Division One

A117317 – Sylver Dean Good v. The Superior Court of Humboldt County; The People, R.P.I.

The order to show cause is discharged. The petition for writ of prohibition is denied. The stay heretofore imposed will be dissolved when the remittitur issues. Marchiano, P.J. I Concur: Swager, J. (See dissenting opinion by Margulies, J.) (Certified for Publication.)

A116211 – The People v. Louis Shane Edwards.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A117803 – Edwin H. Rayford v. Cherry Baena-Levstek.

The appeal is dismissed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Wednesday, January 16, 2008

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Haerle, Acting P.J., Lambden, J., Richman, J., Officer LaPonte and I. Santos, Deputy Clerk.

- A116044 The People,
 v.
 Lucy Ellen Cheesman.
Cause called and argued by Elisa Joanne Stewart, counsel for appellant, and Deputy Attorney General, Christopher Wei, counsel for respondent. Cause ordered submitted.
- A115372 Dennis W. Brown,
A117176 v.
 Performance Contractors, Inc.
Cause called and argued by Richard M. Rogers, counsel for appellant, and Jason John Curliano, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

Wednesday, January 16, 2008 (continued)

Division Three

A115155 – In re Antonio L., a Person Coming Under the Juvenile Court Law. The People v. Antonio L.

The judgment is modified to reflect a maximum confinement term of nine years six months and 407 days of custody credit. As modified, the judgment is affirmed. McGuiness, P.J. We Concur: Pollak, J., Horner, J.* (Not for Publication.)

A117890 – Melvin M. Phillips v. City of Blue Lake, et al.

The judgment is affirmed. Phillips shall bear costs on appeal. McGuiness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication.)

Division Four

A114597 – James E. Roberts-Obayashi Corporation v. PMN Design Electric, Inc.

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A113752 – Iola Frastaci, Individually and as Successor in Interest, etc., et al. v. Vapor Corporation.

By the Court: The requests for publication of this court's December 21, 2007 opinion are granted and it is hereby ordered that said opinion be published in the Official Reports. Ruvolo, P.J. (Certified for Publication.)

Division Five

A116501 – The People v. Fere Habte Zekarias.

The judgment is affirmed. Jones, P.J. We Concur: Needham, J., Stevens, J.* (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, January 17, 2008

Division One

A117429 – The People v. Andre Brown.

Defendant was represented by counsel throughout the proceedings. We find no arguable issues that require further briefing and accordingly, affirm the judgment. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A115875 – The People v. Lawrence Hayes.

The trial court is directed to correct the sentencing minute order and abstract of judgment to show that the section 667.5 subdivision (b) enhancements were stricken, and that defendant was convicted of four counts of violating Health and Safety Code section 11352, subdivision (a). As corrected, the judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A114493 – The People v. Chiaho Wu.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

A115481 – In re A.H., a Person Coming Under the Juvenile Court Law. The People v. A.H.

The judgment is affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A116868 – Jacqueline King v. Law Offices of Sussman & Ziskin.

The order is affirmed. Siggins, J. We Concur: Pollak, Acting P.J., Horner, J.*

Division Five

A116309 – Dillard Trucking v. Gurdial Athwal.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Stevens, J.* (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Thursday, January 17, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Stevens, J.,* and Richard H. Sandvik, Deputy Clerk.

- A114647 Security National Guaranty, Inc.,
 v.
 California Coastal Commission,
Cause called and argued by Thomas D. Roth, counsel for appellant, and by Peter K. Southworth, counsel for respondent. Cause ordered submitted.
- A114805 Northwest Energetic Services,
A115841 v.
A115950 Franchise Tax Board,
Cause called and argued by Amy L. Silverstein, counsel for appellant, and by Marguerite C. Stricklin, counsel for respondent. Cause ordered submitted.
- A118789 Albyn Douglas Mackintosh et al.,
 v.
 Half Moon Bay Fire Protection District et al.,
Cause called and argued by Alan C. Davis, counsel for appellant, and by Jean B. Savaree, counsel for respondent. Submission deferred. On the court's own motion oral argument is continued and additional brief shall be determined by order.
- A115387 Vincent Falletta et al.,
A117069 v.
 Sun Star Country Club,
Cause called and argued by Michael B. Montgomery, counsel for appellant, and by Ronald S. Barkin, counsel for respondent. Cause ordered submitted.
- A115521 Pinnacle Distribution Co. Inc.,
A116521 v.
 Vahdani Construction Company, Inc.,
Cause called and argued by Margaret A. Seltzer, counsel for appellant, and by Eli J. Karpeles, and Jason N. Bernstein counsel for respondent. Cause ordered submitted.

A118020 Melvin Ford Jr.,
v.
Dominican Sisters Of Mission San Jose et al.,
Cause called and argued by Larry S. Spears, counsel for appellant, and by Adrienne M. Moran, counsel for respondent. Cause ordered submitted.

A115806 The People,
v.
Richard Lyle Sanderson, Jr.,
Cause called and argued by William R. Such, counsel for appellant, and by Dorian Jung, counsel for respondent. Cause ordered submitted.

At 11:24 a.m. the court recessed until 1:30 p.m.

*Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five,
assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Thursday, January 17, 2008

Court re-convened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Stevens, J.* Richard H. Sandvik, Deputy Clerk.

A113564 The People,
 v.
 Edward Berry Armstrong,
Cause called and argued by Laureen A. Bethards, counsel for appellant, and by Jeffrey M. Laurence, counsel for respondent. Cause ordered submitted.

A115487 The People,
 v.
 Jermaine Anthony Givens,
Cause called and argued by John F. McCabe, counsel for appellant, and by Nanette Winaker, arguing via teleconference, counsel for respondent. Cause ordered submitted.

A117525 In re Jibri P., a Person Coming Under the Juvenile Court Law.
 The People,
 v.
 Jibri P.,
Cause called and argued by Peter B. Meadow, counsel for appellant, and by Christopher Grove, counsel for respondent. Cause ordered submitted.

A115911 The People,
 v.
 Jan L. Erickson,
Cause called and argued by John Ward, argued via teleconference, counsel for appellant, and by Eric D. Share, counsel for respondent. Cause ordered submitted.

Court adjourned at 2:15 p.m.

*Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, January 18, 2008

Division Two

A112705, A112830, A113358 – Jennifer E. Gill, A Minor, etc. v. Tamalpais Union High School District, Presidio Sport & Medicine.

The judgment, and the order denying Presidio's motion for judgment NOV are affirmed. The parties shall bear their respective costs on appeal. Richman, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A117534 – Gilbane Building Co. v. Air Systems Acquisition, Inc.

The judgment is affirmed. Air Systems Acquisition is awarded the costs on appeal. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Four

A114257, A114273 – Cardinal Health 110, Inc. v. State Board of Equalization.

The judgment is affirmed to the extent it allows Cardinal a refund of sales and use taxes paid on insulin syringes. In all other respects, the judgment is reversed. The matter is remanded for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A117531 – Prana Growth Fund I v. David Parkinson.

The order is affirmed. Respondent David Parkinson is also entitled to reasonable attorney fees and costs on appeal. The matter is remanded to the trial court for a determination of the specific amount of attorney fees and costs on appeal to be awarded. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A116544 – Richard B. Luke v. Collotype Labels USA, Inc.

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Tuesday, January 22, 2008

Division One

A115657 – The People v. Delon Larone Adams.

The judgment is reversed and the cause remanded to the superior court. That court is directed to vacate the no contest plea if defendant makes an appropriate motion within 30 days after the remittitur is issued. In that event, the superior court should reinstate the original charges contained in the information, if the prosecution so moves, and proceed to trial or make other appropriate dispositions. If no such motion to vacate the no contest plea is filed by defendant, the trial court is directed to reinstate the original judgment. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A117694 – In re Nicholas T., a Person Coming Under the Juvenile Court Law. The People v. Nicholas T.

Accordingly, the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A117846 – The People v. Matthew David Ford.

The judgment and sentence are both affirmed. Haerle, J. We Concur: Kline, J., Richman, J. (Not for Publication.)

Division Three

A119813 – Jeremiah S. v. The Superior Court of Contra Costa County; Contra Costa County Bureau of Children and Family Services, R.P.I.

The order to show cause is discharged, and the petition for extraordinary writ is denied on the merits. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452; *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Rule 8.264(b)(3).) Siggins, J. We Concur: McGuiness, P.J., Horner, J.* (Not for Publication.)

A116295 – The People v. Jack B. Williams.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Certified for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, January 22, 2008 (continued)

Division Three

A115352 – The People v. Roderick Michael Rivas.

The judgment is affirmed. McGuiness, P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication.)

A118029 – The People v. Demosthenes J. Caicedo.

The judgment is affirmed. Horner, J.* We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, January 22, 2008

The Court reconvened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Ruvolo, P.J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Marty Fredericks, Bailiff.

A117517 Richard Dosremedios et al.
v.
Pantheon Design & Construction et al.
Cause called. David P. Bonaccorsi argued for appellants Dosremedios et al. Dolores Bastian Dolton argued for respondents. Cause submitted.

Court adjourned at 10:03 a.m.

Tuesday, January 22, 2008 (continued)

Division Five

A115806 – The People v. Richard Lyle Sanderson, Jr.

The judgment is vacated and the matter is remanded for resentencing. Stevens, J.* We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A117564 – The People v. Salvador David Stabile.

There are no arguable issues. The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.* (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, January 23, 2008

Division One

A117237 – In re R.J. et al., Persons Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. James J.

The juvenile court's orders are affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A115924 – Lee Edmundson v. Board of Supervisors for County of Mendocino: Monte Reed et al., R.P.I.

The judgment is affirmed. Respondent is awarded appellate costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A118192 & A118668 – In re J.D. et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Latoya D.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A117138 – Joseph L. Williams v. Maria Bobadilla.

Bobadilla's motion to dismiss the appeal is granted. The appeal is hereby dismissed. Richman, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A117140 – Joseph L. Williams v. Sarah Shaker et al.

Shaker's motion to dismiss the appeal is granted. The appeal is hereby dismissed. Richman, J. We Concur: Kline, J., Lambden, J. (Not for Publication.)

A113992 – Markel Insurance Company v. Kaiser Foundation Health Plan, Inc.

The judgment is affirmed. Costs to Kaiser. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A120093 – Sue Jane Quon v. Peter B. Weber.

We hereby dismiss this appeal as untimely. Respondent shall recover his costs in connection with this motion to dismiss. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, January 23, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, and San Francisco, California. Present: Presiding Justice McGuinness., Pollak, J., and Siggins, J., and B. Robbins, Deputy Clerk.

A116017 Storus Corporation,
 v.
 Etrim Ve Sheva Holding Corp., et al.;
 Strong Ideas Corporation.
Cause called and argued by Bitu M. Azimi, counsel for appellant, and Robert Andris, counsel for respondent. Cause ordered submitted.

A116333 Grimilda Almendares,
 v.
 Rosabel Almendares.
Cause called and argued by Robert Rudolph, counsel for appellant, and David Nemer, Jr., counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Siggins left the bench and Justice Horner joined the bench.

A117812 The People,
 v.
 Charley Charles.
Cause called and argued by Gabriel Bassan, counsel for appellant, and Dorian Jung, counsel for respondent. Cause ordered submitted.

A112977 S & S Cummins Corp.,
 v.
 West Bay Builders, Inc.
Cause called and argued by Paul Fogel, counsel for appellant, and Robert Thurbon, Jr., counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Pollak left the bench and Justice Siggins re-joined the bench

A116547 Insurance Company of the State of Pennsylvania,
 v.
 Assuranceforeningen Gard-Gjensidig, et al.
Cause called and argued by Cameron Stout, counsel for appellants, and Brad Pauley,

counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuinness left the bench and Justice Pollak re-joined the bench. Justice Pollak presided over the last case on the morning calendar.

A116825 Citizens for Responsible Open Space, et al.,
 v.
 San Mateo Co. Local Agency Formation Commission, et al.;
 Midpeninsula Regional Open Space.
 Cause called and argued by Todd Ratshin, counsel for appellants, and Ellison Folk,
 counsel for respondent Midpeninsula Open Space and also on behalf of respondent
 San Mateo LAFCo. Cause ordered submitted.

COURT ADJOURNED

Wednesday, January 23, 2008 (continued)

Division Four

A116874 – In re S.M., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. R.G. et al.

The juvenile court's orders terminating the parental rights of mother and father, denying the section 388 petitions of mother and great-aunt Lisa, and denying father's request to set aside disposition orders are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A117387 – Ra Sop v. Kathy Sop.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A117784 – In re Andres S., a Person Coming Under the Juvenile Court Law. The People v. Andres S.

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A115790 – Thomas A. Matos v. University of San Francisco.

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A116930 – In re Thomas P., a Person Coming Under the Juvenile Court Law. The People v. Thomas P.

The order is affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Wednesday, January 23, 2008 (continued)

Division Five

A113059 – The People v. Scott Frank Williams.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

A119892 – Kathleen R. v. The Superior Court of Solano County; Solano County Department of Health and Social Services, R.P.I.

The petition is granted. Let a writ issue directing the juvenile court to vacate its order setting the case for a section 366.26 hearing and further directing it to ensure that proper ICWA notice is sent to the Tribes and BIA. If, after receiving such notice, no tribe intervenes, the juvenile court shall reinstate its order and set a new date for the section 366.26 hearing. (See *In re Jonathan D.* (2001) 92 Cal.App.4th 105, 111-112.) If, upon proper notice, a tribe determines that the minor is an Indian child as defined by the ICWA, the juvenile court shall conduct all further proceedings in conformity with all provisions of the ICWA.

This opinion is final immediately as to this court. (Cal. Rules of Court, rule 8.264(b)(3).) Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A118020 – Melvin R. Ford v. Dominican Sisters of Mission San Jose, Inc., et al.

The judgment (order dismissing the action against respondent Dominican pursuant to sections 583.210, 583.410 & 583.420) is affirmed. Costs on appeal are awarded to Dominican. As to defendant Capuchin, which filed a respondent's brief in this matter, the parties shall bear their own costs. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A117525 – In re J.P., a Person Coming Under the Juvenile Court Law. The People v. J.P.

The jurisdictional finding that Defendant committed sexual battery on or about September 22, 2006 is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

A115487 – The People v. Jermaine Givens.

The seven-year upper term sentence for the violation of section 246 (count 3) is vacated. The trial court, by written notice to counsel, and the prosecutor, by written notice to the trial court and counsel, each has the right to initiate, within 30 days after the filing of the remittitur in the trial court, a contested resentencing hearing within 60 days after the filing of the remittitur in the trial court, to be conducted in accordance with the procedures recently outlined by our Supreme Court in *People v. Sandoval*, supra, 41 Cal.4th at pages 843-852. If no resentencing hearing is initiated within 30 days of the issuance of the remittitur, the sentence on count 3 shall be modified to the five-year middle term. The judgment is otherwise affirmed. Needham, J. We Concur: Simons, Acting P.J., Stevens, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, January 24, 2008

Division Two

A115372 – Dennis W. Brown v. Performance Contracting, Inc.

A117176 – Dennis W. Brown v. Performance Contracting, Inc.

The judgment is affirmed. The parties will bear their own costs on appeal. Lambden, J. We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

A115059 – Brian Ahmadzai v. Thomas S. Bryant, et al.

The judgment is affirmed. Costs on appeal to respondents. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A115714 – The People v. Kenneth William Destefano.

The judgment is affirmed. Kline, P.J. I Concur: Richman, J. (See Concurring opinion by Haerle, J.) (Not for Publication.)

A115075 – The People v. Jerice Y. Hunter.

The judgment of conviction is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A118038 – The People v. Massai Moser.

The judgment is affirmed. Horner, J.* We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Five

A116571 – Whistler Management, Inc. v. Arlen Bauer.

The order granting summary adjudication of Bauer's first claim for declaratory relief and first and fifth affirmative defenses is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, January 25, 2008

Division One

A117260 – The People v. Michael Breck Lemon.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A116116 – Wells Fargo Bank, N.A. v. The Superior Court of San Francisco County; Mary L. Richtenburg et al., R.P.I.

The petition is granted. Let a peremptory writ issue directing respondent superior court to vacate its order overruling defendant Wells Fargo Bank's demurrer in *Mary L. Richtenburg et al., v. Wells Fargo Bank, N.A.* (Super. Ct. S.F. No. 05-444516) and to issue a new and different order sustaining the demurrer with leave to amend. The parties shall bear their own costs incurred in this writ proceeding. (See Cal. Rules of Court, rule 8.490(m)(2).) Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Certified for Publication.)

Division Four

A113322 – Kohlweiss, Inc. v. Donald Smith et al.

The judgment is affirmed. Kohlweiss is awarded its costs on appeal. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Friday, January 25, 2008 (continued)

Division Five

A114647 – Security National Guaranty, Inc. v. California Coastal Commission et al., Sierra Club.

The judgments are reversed insofar as they deny SNG's request for a writ of administrative mandamus, and the superior court is ordered to issue a peremptory writ commanding the Commission to vacate its decision and rehear the matter based on the standards set forth in Sand City's certified LCP. The judgments entered in favor of the Commission and the Sierra Club on SNG's claims for breach of contract and estoppel are affirmed. Each party shall bear its own costs on appeal. (Cal. Rules of Court, rule 8.276(a)(3).) Needham, J. We Concur: Jones, P.J., Stevens, J.* (Certified for Partial Publication.)

A113564 – The People v. Edward Berry Armstrong.

The judgment is affirmed. Needham, J. We Concur: Simons, Acting P.J., Stevens, J.* (Not for Publication.)

A118057 – In re Devon J., a Person Coming Under the Juvenile Court Law. The People v. Davon J.

The orders are affirmed. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, January 28, 2008

Division One

A118286 – The People v. Michael A. Richards.

After a full review of the record, we find no arguable issues and. Accordingly, affirm the order. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Two

A117774 – Zia Nawabi v. Department of Motor Vehicles.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Richman, J. (Not for Publication.)

A118708 – The People v. Elliott Michael Walin.

The judgment and sentence imposed are affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

A116333 – Grimilda Almendares v. Rosabel Almendares.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

A118284 – The People v. Richard Allen Clapham.

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

A116392 – The People v. Robert Lee Mason.

The judgment is affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A116344 – Living Rivers Council v. City of St. Helena et al.

The order is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Tuesday, January 29, 2008

Division One

A111267/A112153 – Conrad J. Dell’Oca et al. v. The Bank of New York Trust Company, N.A.

The order granting BNY a new trial is affirmed. The orders denying plaintiffs partial judgment notwithstanding the verdict, and denying BNY judgment notwithstanding the verdict, are affirmed. The order awarding statutory costs to plaintiffs is reversed. BNY is awarded appellate costs incurred in responding to the appeal. Plaintiffs are awarded appellate costs incurred in responding to BNY’s argument that the trial court erred in denying its motion for judgment notwithstanding the verdict. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Certified for Publication.)

Division Two

A115662 – James Morrison et al. v. Copeland Corporation.

The judgment is affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A117745 – The People v. Kempy Jackson.

The trial court’s order recommitting appellant is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Tuesday, January 29, 2008 (continued)

Division Two

A120005 – Debra Der Torossian v. Superior Court of California, County of San Mateo; Gregory Der Torossian, R.P.I.

By the Court: By petition for writ of mandate, petitioner Debra Der Torossian challenged the November 28, 2007 order by respondent superior court assigning certain matters to Commissioner DuBois and requested a stay of proceedings. We granted the stay on December 11, 2007, and requested opposition from the real party in interest. Counsel for real party in interest informed the court that real party in interest "is not desirous of expending the funds to retain the services of an appellate attorney to file the opposition," and asked that "the Court be kind enough to rule on the Petition based upon the merits and the law."

The matters assigned to Commissioner DuBois in this case on November 28, 2007, do not appear to be subordinate judicial duties within the meaning of article VI, section 22 of the California Constitution. (See Code Civ. Proc., section 259, subd. (e); *Settemire v. Superior Court* (2003) 105 Cal.App.4th 666, 672-673.)

Nor has petitioner stipulated to those matters being heard by a commissioner sitting as a judge pro tem. While petitioner and real party in interest did stipulate in 2002 to the trial on the matter being heard by Commissioner DuBois, that matter was concluded on November 2, 2004. Indeed, Commissioner DuBois made that clear in the November 2, 2004 order, which states that it was "ntended to be a permanent order" within the meaning of *Montenegro v. Diaz* (2001) 26 Cal.4th 249.

As the matters are not subordinate judicial duties and there is no stipulation to Commissioner DuBois presiding as a judge pro tem, petitioner's timely objection is well taken. Let a peremptory writ of mandate issue commanding respondent to have the matters assigned to Commissioner DuBois on November 28, 2007 be heard by a judge of the superior court. The stay will remain in effect until issuance of the remittitur. Before Kline, P.J., Lambden, J., and Richman, J.

Division Three

A117812 – The People v. Charley Charles.

The judgment is affirmed. Horner, J.* We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A119015 – In re Jarrett S., a Person Coming Under the Juvenile Court Law. The People v. Jarrett S.

The orders of the juvenile court are affirmed. Siggins, J. We Concur: Pollak, J., Horner, J.* (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, January 29, 2008 (continued)

Division Four

A115441 – The People v. Jerry Thomas Taylor, Jr.

The judgment is affirmed. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A119487 – L. F. v. The Superior Court of Marin County; Marin County Department of Health and Human Services et al., R.P.I.

The petition is denied on the merits. (§ 366.26, subd. (l)(1)(C); Cal. Rules of Court, rule 8.452; *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rule 8.264(b)(3).) The request for a stay of the February 5, 2008, hearing is denied. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A117735 – The People v. Leonides Ibarra Hernandez.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A115283 – The People v. Eric Lee Carlsen.

The trial court is ordered to strike that portion of the sentence regarding the 75 days in county jail and file an amended abstract of judgment. In all other respects, the judgment is affirmed. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

A113586 – Sandra Louise Noble v. Alina Sierra Castor.

By the Court: It is ordered that the opinion filed on December 31, 2007, be modified as follows: (See order.) The petition for rehearing is denied. This order does not effect a change in the judgment. Jones, P.J. (Not for Publication.)

A116758 – Francis Collins v. City of Alameda.

The order denying Collins's petition for writ of mandate is affirmed. The order designating Collins as the prevailing party is reversed, and the matter is remanded for an award of costs to the City. The City is awarded costs on appeal. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Wednesday, January 30, 2008

Division Three

A115527 – The People v. Joseph Lee Peck.

The judgment is affirmed. Horner, J.* We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

A117783 – In re Adrian M. et al., Persons Coming Under the Juvenile Court Law. Marin County Department of Health and Human Services v. Angela F. et al.

The orders of May 1, 2007, denying the section 388 petitions and terminating parental rights are affirmed. McGuinness, P.J. We Concur: Siggins, J., Horner, J.* (Not for Publication.)

A116017 – Storus Corporation v. Eslim Ve Sheva Holding Corporation et al.; Strong Ideas Corporation, R.P.I.

The amended judgment is affirmed. Siggins, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

A116547 – Insurance Company of the State of Pennsylvania v. Assuranceforeningen Gard- Gjensidig et al.

The order filed December 13, 2006, is affirmed. Siggins, J. We Concur: McGuinness, P.J., Horner, J.* (Not for Publication.)

Division Four

A114308 – Denise Boucher v. Stephen Wisniewski et al.

By the Court: The petition for rehearing is denied. Ruvolo, P.J.

Division Five

A115521/A116521 – Pinnacle Distribution Co., Inc. v. Vahdani Construction Company Inc.

The July 21, 2006 decision on remand is affirmed. The October 17, 2006 order of attorney fees and costs is modified to provide that Vahdani is not liable for the attorney fees award and that interest on costs runs from September 27, 2006. As so modified, the order is affirmed. Simons, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, January 30, 2008 (continued)

Division Five

A117133 – The People v. Sambath Mao.

The judgments are affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

A115387/A117069 – Vincent J. Falletta, as Trustee, etc., et al. v. Sun Star Country Club.

The judgment and the order awarding attorney fees are affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

Thursday, January 31, 2008

Division Two

A117792 – The People v. Carl McCoy.

Accordingly, the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A114612 – The People v. Reginald Wyatt.

The conviction in count 2, assault on a child causing death (§ 273ab), is reversed. In all other respects, the judgment is affirmed. Haerle, J. I Concur: Richman, J. (See concurring and dissenting opinion of Kline, P.J.) (Not for Publication.)

A117772 – In re Lee Dale Crockett, on Habeas Corpus.

Petitioner's petition is granted and the judgment against him in People v. Crockett, Mendocino County Superior Court, case No. SCUK-CRCR-04-59780 is hereby vacated. We remand this matter to the trial court for further proceedings consistent with this opinion. Nothing herein should be construed as preventing California law enforcement authorities or our courts from taking actions related to the supervision of petitioner's probation pursuant to the ICJ or to the Texas State juvenile court adjudication and that court's conditions of probation. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Certified for Publication.)

A117839 – The People v. James Jamall Miller.

Our independent review having found no arguable issues that require briefing, the judgment of conviction is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A118291 – The People v. Jeffrey Jonathan Happ.

The judgment of conviction is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A116825 – Citizens for Responsible Open Space et al. v. San Mateo County Local Agency Formation Commission et al.; Midpenninsula Regional Open Space District, R.P.I.

The judgment is affirmed. San Mateo County Local Agency Formation Commission, San Mateo County, and Midpenninsula Regional Open Space District shall recover their costs on appeal. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J.* (Certified for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, January 31, 2008 (continued)

Division Three

A114926 – The People v. Christopher Anthony Bautista.

Defendant's conviction under count three is stricken, and the abstract of judgment shall be modified accordingly. In all other respects, the judgment is affirmed. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J.* (Not for Publication.)

A112977 – S&S Cummins Corporation v. West Bay Builders, Inc.

The judgment is affirmed. Each party shall bear its own costs on appeal. McGuiness, P.J. We Concur: Pollak, J., Horner, J.* (Certified for Partial Publication.)

A118937 – The People v. Anthony Hunter.

The judgment is affirmed. McGuiness, P.J. We Concur: Siggins, J., Horner, J.* (Not for Publication.)

A118104 – Gamelink, LLC. v. Internet Business Skills et al.

The appeal is dismissed. Appellants shall bear the costs of appeal. Respondent's request for sanctions and attorney fees is denied as there is no declaration to support the request. Pollak, Acting P.J. We Concur: Siggins, J., Horner, J.* (Not for Publication.)

A118844 – The People v. Rhonda Denise Nelson.

The judgment is affirmed. The trial court is directed to correct the amended abstract of judgment to reflect that both sentence enhancements associated with count 1A were imposed under section 12022.1, and to reflect that the date of conviction for both count 1A and count 1B is "04-01-04." The court shall forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation. McGuiness, P.J. We Concur: Siggins, J., Horner, J.* (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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Thursday, January 31, 2008 (continued)

Division Four

A116181 – The People v. Anthony Marques Fikes.

The judgment is reversed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A115020 – The People v. James Robert Zook.

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

A114236/A115356 – Adrian J. Kruse v. George Nikolaou Charos.

The judgment is affirmed. The parties shall bear their own costs on appeal. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

A116158 – James P. Keenan v. Retirement Board of the City and County of San Francisco.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A120000 – In re A.A.A. et al., Persons Coming Under the Juvenile Court Law. Shaun A. v. The Superior Court of Sonoma County; Sonoma County Human Services Department of Family Youth and Children, R.P.I.

The petition for writ of mandate is denied on the merits. (§ 366.26, subd. (l)(1)(c); Cal. Rules of Court, rule 8.452; *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rule 8.264(b)(3).) Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A118657 – Dell, Inc., et al. v. The Superior Court of the City and County of San Francisco; Diane Mohan et al., R.P.I.

The alternative writ, having served its purpose, is discharged. The petition for a writ of peremptory writ of mandate is denied. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Certified for Publication.)

Thursday, January 31, 2008 (continued)

Division Five

A117414 – The People v. Donal R. Hendrix.

The judgment is affirmed. The matter is remanded to the trial court for correction of the minute order of the March 2, 2007 sentencing hearing to reflect a total term for Hendrix's murder and attempted murder convictions of 35 years to life in prison. Stevens, J.* We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A116719 – The People v. Mark Silk.

The judgment is affirmed. Stevens, J.* We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A118078 – In re Faith H., a Person Coming Under the Juvenile Court Law. Solano County Health and Social Services Department v. Latoya S.

The order terminating Mother's parental rights is conditionally reversed and remanded to the juvenile court with directions to order the Department to make reasonable efforts to obtain the relevant information regarding Faith's ancestors and to provide proper notice under the ICWA. If, after proper notice, no tribe claims that Faith is an Indian child or seeks to intervene, or the responses received indicate that Faith is not an Indian child within the meaning of the ICWA, the order terminating parental rights shall be immediately reinstated. If any noticed tribe determines that Faith is an Indian child within the meaning of the ICWA and seeks to intervene, the juvenile court shall conduct further proceedings applying the appropriate provisions of the ICWA, the Welfare and Institutions Code, and the California Rules of Court. Simons, Acting P.J. We Concur: Needham, J., Stevens, J. (Not for Publication.)

A116235 – The People v. Jeffrey Michael Shepherd.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

A117118 – In re David H., a Person Coming Under the Juvenile Court Law. Napa County Health and Human Services v. Karen F.

The appeal is dismissed as moot. Stevens, J.* We Concur: Jones, P.J., Simons, J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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Thursday, January 31, 2008 (continued)

Division Five

A117497 – The People v. Serge Daver Navarro.

The order revoking probation is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

A116177 – The People v. Robert Franklin Bradford.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

A114805/A115841/A115950 – Northwest Energetic Services, LLC v. California Franchise Tax Board.

The judgment is affirmed with the exception that the order awarding attorney fees and costs is reversed. The matter is remanded to the trial court to determine anew the appropriate amount of fees and costs to be awarded consistent with this opinion. Each party shall bear its own costs on appeal. Needham, J. We Concur: Jones, P.J., Stevens, J. * (Certified for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.